

REMARKS

Claims 1-6, 10, 14-15, 19-20, 33-40, 42-43 and 47-90 are cancelled. Claims 7, 9, 11-13, 16-18, 21-32, 41 and 44-46 are pending in this application. Claims 7, 13, 18, 23, 28, and 41 are the pending independent claims.

Rejections under 35 USC 103

None of the cited references alone or in combination describe or suggest a method of combining a food product with an electrodialyzed composition as claimed to provide a final food product having a pH of 4.6 or less. The conventional acids described in the cited references are known to have strong buffering capacity and would be expected to be able to maintain a pH in a final food product below a desired range. One of ordinary skill in the art would have no reasonable expectation that an electrodialyzed composition as claimed would have sufficient buffering capacity to maintain a pH below 4.6 in a final food product. Instead, one of ordinary skill would be more likely to expect that electrodialyzed compositions alone would have limited buffering capacity and would not be able to maintain a pH below 4.6.

McIntyre et al., Dameno et al., Holmes et al., Howard et al., Tan, Hunter, Tonner et al., Brooks et al., Doster et al., Raffensberger, Barnes et al., and Oh are directed to using conventional acidulants, such as organic acids, inorganic acids, and polymeric acids, to reduce the pH of a food followed by a heat treatment step. McIntyre et al., Dameno et al., Holmes et al., Howard et al., Tan, Hunter, Tonner et al., Brooks et al., Doster et al., Raffensberger, Barnes et al., and Oh do not teach or suggest using electrodialyzed compositions instead of conventional acidulants. Conventional acidulants are well known to cause undesirable flavors, colors and taste in the final food product.

The English abstracts of Kenji et al. (JP 8-131065), Hoshizaki Electric Co. et al. (JP 6-113718), Tanaka et al. (JP 9-187221), Hoshizaki Electric Co. (JP 10-262580), Hoshizaki Electric Co. (JP 10-327833), Hoshizaki Electric Co. (JP 10-262583), Nippon Sanso KK (JP 2000-60512), Hoshizaki Electric Co. (JP 2000-139374), Sanki Sangyo KK (JP 2000-312576), Numata (JP 7-274921), Cumakov et al. (EP 642824), Nisshin Flour Milling Co. (JP 6-113769), Okazaki (JP 4-108353), and Suzuki Ryuji (JP 1-196273), as well as Hoshizaki et al. (JP 11-137162; U.S. Patent No. 6,326,048) indicate that these references are directed to the use of electrodialed solutions of varying pH's in combination with food products. However, Hoshizaki et al., Cumakov et al., and the English abstracts of the Japanese references do not teach using these electrodialed solutions to adjust the pH of the food product to a pH of 4.6 or less. In other words, several of the cited references teach the pH of the electrodialed solution but not the pH of the treated food products. One of ordinary skill would not combine references using conventional acidulants with references directed to using electrodialed compositions as conventional acidulants are very different from electrodialed compositions.

Application No. 10/784,699

RESPONSE TO NON-COMPLIANT AMENDMENT dated January 16, 2009

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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